study the Code with these amendments. With the permission of the President, I beg to move that the Bill as now revised by the Council be published in the Gazette and be again considered at the next meeting.

The motion was put and agreed to.

HINDU RELIGIOUS ENDOWMENTS BILL.

A petition having been received the previous day from the following Numboories, praying to be heard at the meeting of the Council in support of their petitions on this Bill before it is taken up for consideration, the Council granted the permission, and heard Neelacantan Narayanan Numboori of Amanakara Illom who spoke on behalf of the others.

1. Neelacantan Narayanan Numboori of Amanakara Illom, Ramapurom.
2. Narayanan Damodaran Numboori of Muriathumalamel, Kidangoor.
3. Thuppan Narayanan Numboori of Maduranchira, Kidangoor.
4. Srikumaran Chennan Numboori of Kongopalli.
5. Krishnan Subramonian Numboori of Palur, Perunna.
6. Thryambakan Numboori of Mannoor, Amayannoor.
7. Sankaran Narayanan Numboori of Elayidom, Kumaranelloor.
8. Sankaran Narayanan Numboori of Choorakad.

The President informed them that their representations would receive the careful consideration of the Council, and the petitioners then withdrew.

Mr. Nagam Aiya.—At the last meeting of the Council I explained in detail the reasons which weighed with the Select Committee in amending the Bill in the way we have done. Before proceeding to the consideration of the Select Committee's Report, I wish, Sir, with your permission to remove the impression in the minds of some of the petitioners that the Select Committee have exceeded the powers granted to them by the Council meeting held on the 29th Dhanu 1076. I would inform the public that the Select Committee composed of so sound a lawyer as Mr. Justice Kunhiraman Nair and the late talented Chief Secretary, Mr. Thanu Pillai, came to the unanimous conclusion with myself, after a very considerable deliberation and discussion, that the Bill would be a very imperfect one, if we did not put in Section 4, clause II, so necessary for the welfare of a large class of valuable religious endowments in Travancore. The Council will notice how much these two learned friends of mine should have felt this desirability, even after the strong remarks they made on clause (*a*) of section 5 of the original Bill, to have so unanimously adopted the present revised Bill. I, therefore, propose that the Council will affirm the action of the Select Committee.

Mr. Kunhiraman Nair.—As a member of the Select Committee, and I regret to have to say, the only surviving member of the Committee besides the learned Member in charge of the Bill, I may be permitted to make a few observations on the revised Bill now under consideration, before the present motion is put to the vote.

The Bill, as originally framed, met with a strong opposition at the hands of several gentlemen, in and outside the Council, whose opinions were entitled to respect, but the opposition was directed rather to details than to the cardinal principles of the measure and the Council after vetoing the proposal for assumption by Government of the management of religious institutions except those specified in clauses (*b*) to (*d*) of section 5, the number of which is very limited, referred the Bill to the Select Committee, with power to modify the Bill in any manner it may deem necessary, and the Dewan–President further observed that the "Committee will undoubtedly eliminate from the Bill all that may appear to operate harshly against the parties interested, and introduce safeguards for the proper working of the law in the best interests of the religious institutions." I allude to the past Proceedings of the Council simply to dispel the idea, which appears to lurk in some quarters, that the Select Committee exceeded its powers in making recommendations in respect of endowments covered by the clauses (*b*) to (*d*) of the original section 5, and I need hardly say that the idea is wholly incorrect. The whole Bill was referred to the Committee, subject, however, to the resolution vetoing the proposal above noted, and

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the Committee took time to consider the whole subject in its various aspects and have unanimously made several important amendments which they considered proper. I do not think any valid objection can be taken to the Committee's procedure, and no express resolution is needed.

The amendments made have been sufficiently explained by the learned Member in charge of the Bill and it is needless to reiterate them here. Suffice it to say that the Amended Bill simply affirms the right of general superintendence of all purely public endowments vested in the sovereign and locally termed *melkoima*, and indicates the mode in which the right is to be exercised by the State, without unduly interfering with vested rights of individuals. No novel principles are introduced and the Committee's proposals are based on lines sanctioned by custom and usage. The extreme views of those who think the claims of the object of the worship and its endowments should override the inherent and inalienable personal rights of the trustees, have not been adopted in their entirety and the safest course has been followed of respecting, as far as possible, both sets of claims. The right of Government as the custodian of public interests and of the claims of the public and the vast body of temple worshippers, is sought to be protected on lines approved by ancient usages, without at the same time setting at naught the individual rights of trustees. The system of management of religious institutions by private individuals is not ended but only mended in the interests of all concerned. The *melkoima* right of Government has been judicially described to be the right of the ruling power to interfere in cases of disputes or fraudulent practices occurring, which the British Government itself virtually assumed when they enacted Regulation III of 1817, though they subsequently transferred this right to temple committees appointed under Act 20 of 1863, for reasons which do not apply to a Hindu State ruled by a Hindu Sovereign. There is, as far as the Select Committee have been able to ascertain by enquiry, no pretence for holding that the *melkoima* right of the Sovereign power here has been expressly given up by the State at any time, though it has, for some years past, been allowed to fall into abeyance with regard to the major portion of the public endowments under private management, owing, as we were given to understand, principally to the doubts entertained as to the precise lines on which the Sovereign power is to be exercised and to the absence of proper statutory provisions for the exercise of the *melkoima* right in a manner compatible with civilised systems of administration and on a constitutional basis. It is this want that is sought to be supplied by the revised Bill, and it will be seen that one of the recognised principles underlying legislation, namely, that it should not go beyond proved necessity, has been kept in view in framing the several amendments. For instance, the scope of the Bill has been restricted to purely public religious institutions, by excluding from the purview of the Bill all institutions in which the right of management has, from time immemorial, been hereditary in a single joint-family called Mana, Illom or Tarward, or in the representatives of Sanyasi houses to which the institution or temple is attached. The existence of gross mismanagement in the case of such institutions as a whole has not been clearly proved, though there have been solitary instances of mismanagement here and there, and as the joint-family is legally constituted, it is the interest of the younger members to see that the elder, who manages the family and as such represents the religious institutions attached to the family, does not neglect his duties, and they may be trusted to exercise properly their right of conserving the endowments appertaining to their house. The origin of the foundations of many of these institutions is involed in mystery, and it is very difficult at this distance of time to determine when, and with what primary object, these institutions were orginally founded and whether the public of the place used them on mere sufferance or as a matter of right. The prevalent idea is that the family of the founder has a substantial proprietary interest in these endowments, and it may be noted here that the practice of founding temples intended primarily for the benefit of the founder and his descendants and of allowing the public to carry on worship in such temples, without any idea of conferring any rights on the worshippers, has for a long time prevailed on the west coast. Many Hindu aristocratic and leading families there are, who have dedicated all their family property nominally for the worship of their family Deity, but really for the benefit of their descendants, it being understood that the proceeds from the endowments, after deducting the expenses of the worship, are to be taken by the founder and his descendants. It is probably on the ground of the prevalence of such practice that the Madras Temple Commission presided over by the late

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Sir. T. Muthuswami Iyer recommended the expediency of excluding from legislation the temples owned by aristocratic families in Malabar. There are several aristocratic and leading families who often spend their own money above the income of endowments for the inkeep of worship in the pagodas attached to their family, and it would be both wounding their dignity and doing them wrong to subject them to the supervision of others. There is, from the ancient practice adverted to above, every ground for raising, in favour of endowments managed by single families, the presumption that they are virtually private endowments. There seemed from the enquiries made by the Committee a strong feeling against the inclusion of these institutions under the head of public endowments over which the Sovereign power of *melkoima* is to be exercised, and it goes without saying that the State in its legislative capacity is bound to respect public feeling and sentiments and to abstain from doing any thing calculated to operate as confiscation of private rights, without offering an adequate compensation for the holders of such rights. The case of purely public endowments, which those under the management of a Board of trustees may generally be presumed to be, is different. There is, in their case, no scope for the presumption that the endowments under their charge are private and belong exclusively to them. They are, as the term *Ooralan* originally signified, (though the term has in later times been used to denote trustees of every religious endowment, whether public or private), simply the representative of Oor or the village community, and their right extends properly speaking only to management of religious institutions as representatives of the community, though they too have in course of time set up proprietary rights. There have been several disputes and dissensions among these classes of trustees, as the Law Reports and the records of courts amply testify, and the exercise of Sovereign power to check these disputes and the consequent deterioration of trust property seems called for in their case. Care has, however, been taken to preserve their cherished rights by laying it down that, when the trusteeship is hereditary in his family, the rights of management vested in the family should be left intact by allowing other members to step into the shoes of the member found on proper enquiry unfit to be retained in the office of trustee. The Committee does not stop at thus safe-guarding the personal rights alone. They have, in view of the fact that the deterioration of local religious endowments is, partly at least, due to the difficulty of collecting rents and perquisites, provided for their easy and sure realisation of the rents etc., by making them recoverable as arrears of public revenue. Shortness of funds, consequent on the default and irregularity of evasive lessees in the matter of payment of dues, has been pointed out as one of the main causes of the deterioration of local religious endowments, and knowing, as we do, the difficulties of recovering outstandings, especially from a petty-holding agrarian class, the complaint made on this point on behalf of the trustees seems not to be unfounded. With the inexpensive and certain means provided for securing the income that the institutions, according to the extent of the estate of each, could expect at fixed times, the management of their affairs, conformably to their resources, ought to be possible without the difficulties encountered at present. The check provided by section 15 upon the misdoings of corrupt and greedy trustees must be welcomed as a very salutary one. No honest manager of public trusts can have even a semblance of objection to leaving his accounts open to public inspection and particularly to that of the ruling authority. Honest trustees should be foremost to offer their accounts for authorised scrutiny, thus setting an encouraging example to the less scrupulous men. The power conferred on the Dewan to call for accounts from trustees falling within the purview of the Bill, is comparatively insignificant and harmless, and no true lover of over-board dealings would, I believe, consider the step an unjust fettering of his precious liberty. It is but an exercise of a right inherent in the *melkoima* that is enacted in the section, and such right of inspection of accounts should be retained.

The difficulty of taking legal action on behalf of a devaswom for the enforcement of the devaswom's right, on account of the factious spirit that seems to generally exist where there is a plurality of ooralers, has, it should be admitted, contributed to the prevalence of a let-alone policy in the case of several devaswoms. The ruinous effects of dilatoriness or delay in the matter of seeking, where necessary, the aid of courts, can best be appreciated by those that have known how the law of limitation legally extinguishes rights that once existed, if the court's aid is not sought within a prescribed time. The Committee have, with a view to remove this admittedly

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vital danger to local religious endowments given effect to an element of their ancient constitution, under which an officer called the samudayam was to manage on behalf of the body of ooralers and under their orders. The soundness of this scheme as facilitating the despatch of the work of the devaswoms is obvious. The samudayam or manushyam, wherever such office existed, was recognised as the representative of the devaswom for the purpose of suing and being sued on behalf of a devaswom until a very late period. The Madras High Court seems to have recognised the right of suit of samudayams until 1875, from which time, however, the court regarded him simply as agent not enttlied to sue in the absence of express authority conferred by law. The local High Court did not at first adopt the Madras view and followed the old usage, but recently the local High Court seems inclined, in the present state of procedure law, to adopt the Madras view in some respects and to refuse the samudayam's competency to bring suits for all purposes. The matter is involved in great doubt, and it is high time for the legislature to step in and to remove all doubts by express legislation. The consequence of not allowing the samudayam to enforce all the rights of the devaswom by a suit in his own name would be a dead-lock resulting in neglect of institutions and waste of money in litigations. The present Bill confers on the samudayam or other office-bearer, by whatever name known, the right to represent in courts devaswoms falling under the Bill, so as to avoid the difficulties, inconvenience and delay incidental to representation by a whole corporation individually. The present provision by itself would not vest in the samudayam any proprietary title, and what is sought thereby is only to smoothen the way for actions on behalf of and in the interests of devaswoms by shifting the right of representation in suits from a cumbrous and often conflicting and combative body to a single individual, a mere revival, so far, of the scheme of management as laid down by the original founders of the trusts. Suits by and against corporations or companies are allowed to be brought in the name of an officer of the corporation or companies and Chapter 28 of the Civil Procedure Code makes provision for such suits. The samudayam or other manager may well be regarded as an officer of the devaswom corporation, and the power to sue and be sued could not injuriously affect the rights of ooralans, who are at liberty to call upon the samudayam at any time for an account of his management.

I shall not detain the Council by further remarks, and must conclude with the observation that it is impossible to satisfy every body interested in the subject-matter under legislation and that the Committee have done what they considered best for the good of the greatest number.

Mr. Kuruvila.—Although the learned speakers before me have, as the surviving members of the Select Committee, explained the position taken up by them in dealing with this Bill, my regard for the late lamented Mr. Thanu Pillai compels me to say a word in support of what they have said, so that the aspersion made on his action as a member of the Select Committee may be removed. So far as I am able to see, the Select Committee have not exceeded their powers. Clause (*a*) of section 5 of the original Bill which was withdrawn by the learned Mover at the meeting of the Council on the 12th January 1901, in deference to the opinions then expressed in the Council, has not been brought in by the Select Committee. As such, it seems to me that the impression referred to in some of the petitions is erroneous. Mr. Nagam Aiya has, however, put his motion in such a way that my impression as to the erroneousness of the view entertained by the petitioners does not prevent my supporting the motion. When it is said that the Select Committee have not exceeded their powers, it is tantamount to ratifying what they have done.

Mr Rajaram Row.—I have no objection to the motion now before us.

Mr. Kesava Pillay.—I have no objection to offer.

Mr. Ferguson.—I do not wish to make any remarks, as I do not consider my knowledge of the subject sufficient to enable me to express an opinion one way or the other.

Mr. Dharmaraja Iyer.—I support the Bill as amended by the Select Committee. In doing so, I cannot but observe that it is particularly gratifying to see that it has reached its last stage. Its proposed object, the well-being and prosperity of Hindu religious institutions, though very much misunderstood in the beginning,

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has now been accepted as beneficent legislative protection even by those who held a hostile attitude in its initial stage. There was then considerable excitement and opposition, both in and out of the Council, regarding the scope and utility of the Bill as originally framed, since it was thought impracticable and inexpedient as a whole. The Bill, as now modified, not only gives a complete relief to all the critics by removing such misconceptions, but also hastens the feasibility and increases the utility of the measure by expressly excluding from its operation all purely secular charitable endowments and all religious institutions in the sole management of single persons or families, and also by providing safeguards against high-handed and summary assumptions by the salient provisions of section 6.

The necessity for such a measure need not now be much adverted upon, as it has been admitted and acted upon by the Council itself at a previous meeting, and is also evidenced by the several petitions to the Council supporting the same. The enormous properties scattered in charitable trusts, the proverbial ignorance and indifference of some of the managers, the rivalry, jealousy and collusion in others, all these oftentimes combine to bring in disruption and mismanagement, and thus retard and frustrate the noble intentions of the donors. That a constitutional Government of modern times cannot be a mere on-looker at the slow decay and disappearance of the many Oorala and Kara temples scattered throughout the length and breadth of this charitable land, but must boldly step in to help, encourage and protect such institutions, is a matter beyond doubt.

Some of the petitions received, proceeding presumably from the same quarter, deprecate this measure on the ground that it proceeds upon a gratuitous assumption of mismanagement in many institutions, and recommend the appointment of a Commission to hold an elaborate enquiry into the actual state of matters. I must confess I am not a little surprised at this statement. It is a well-known fact that many of the Oorala temples are fast drifting into ruin, with, of course honorable exceptions. Opinions might differ as to the causes which contribute to this decline, but the fact itself cannot be denied by any person acquainted with the country. This is fully admitted in the elaborate and erudite speeches delivered in this Council when the principle of the Bill was discussed. In my humble opinion, this is a matter beyond doubt, and, it seems to me, it would be a needless waste of time and money to appoint a Commission as prayed for by the petitioners.

Another point urged by the petitioners deserves special mention. They contend that the Select Committee have exceeded their powers in bringing back into the Bill a provision which had been rejected by the Council at the first reading. On a careful perusal of the original Bill and the amended Bill, I am constrained to say that this contention is based on a misconception. The Select Committee's Bill does not authorise the assumption of Oorala temples on the ground of mismanagement, as apprehended by the petitioners. The power of assumption is restricted to the instances falling under clauses (*a*), (*b*), (*c*) and (*d*) of section 4 (I), which are really of a non-contentious nature. In fact, the Bill contains every precaution against undue interference with vested rights and the provision in section 11 regarding the restoration of temples even after assumption is an unmistakable protection afforded to the Ooralers. With these few remarks, I submit that the measure has my fullest sympathy and support.

The motion was put and agreed to.

As it was now 5-30 P. M., the consideration of the amendments, of which notice had been given, was postponed to the next meeting.

PRESS BILL.

Mr. Rajaram Row.—I beg to present the Report of the Select Committee on this Bill and move that the Report and the amended Bill be published in the Gazette and the consideration of the Bill taken up at the next meeting.

The motion was put and agreed to.

The Council adjourned at 5-35 P. M.

K. KRISHNASWAMY RAO,
President.

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